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IN THE COURT OF APPEAL OF THE STATE OF  
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

EDWIN PHILLIPS,

Defendant and Appellant.

B268468

(Los Angeles County  
Super. Ct. No. 5PH07909)

APPEAL from an order of the Superior Court of Los Angeles County, Jacqueline H. Lewis, Judge. Affirmed.

Heather E. Shallenberger, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Joseph P. Lee and Kathy S. Pomerantz, Deputy Attorneys General, for Plaintiff and Respondent.

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Edwin Phillips appeals the revocation of his parole, which was based upon his failure to keep his global positioning system (GPS) device charged. On appeal, Phillips argues that the court abused its discretion because the evidence was insufficient to support a finding that his violation was wilful. We affirm.

### **FACTS**

Phillips has a long criminal history including several convictions for felony possession of controlled substances, multiple convictions for indecent exposure, and a conviction for failing to register as a sex offender. One condition of his parole required him to charge his GPS device “for one hour two times a day (every 12 hours).” The parole violation report indicated that Phillips had violated his supervision terms on 17 separate occasions and previously had disabled his GPS device.

Phillips charged his GPS device on Thursday, September 24, 2015, for approximately 32 minutes. Phillips did not charge his GPS device on Friday, September 25, 2015. On Saturday, September 26, 2015, at approximately 2:37 p.m., Parole Agent Konstadinos Bogris received an alert informing him that Phillips’s GPS device was in low battery status. At 11:51 p.m., that evening, Agent Bogris received an alert informing him that the GPS device was in critical battery status. At approximately 5:15 a.m. on Sunday, September 27, 2015, Agent Borgis received an alert informing him that Phillips’s GPS device was in “dead” battery status.

At a hearing to determine whether his parole should be revoked, Phillips testified that while he was at work on Friday, September 25, 2016, his possessions were stolen. Phillips further claimed that he did not realize his charger and Agent

Bogris's contact information were missing until the GPS device began vibrating the next day. Phillips insisted he did everything he could under the circumstances to avoid a violation.

On Saturday, September 26, 2015, Phillips called the parole office main line in an effort to inform Agent Bogris about the theft, but was unable reach him. Later that day, Phillips went to the police station several times hoping that they would either have a charger or assist him in locating one. On the first three visits, the police told him that it was a parole issue and there was nothing they could do. On his fourth visit, Phillips was told to go to the Midnight Mission because they had a GPS charging station. Phillips went to the Midnight Mission repeatedly on Saturday, September 26, but was unsuccessful in locating a charger. Phillips returned to the Midnight Mission at 4:00 a.m. on Sunday, September 27, 2015, and was told to come back when they open the front desk at 8:00 a.m. He returned at that time and may have charged his GPS device. While at the Midnight Mission, Phillips received a message that Agent Bogris had called him. Phillips tried to contact Agent Bogris by calling the parole office main line but spent 30 minutes trying to ascertain Bogris's extension number, before leaving a message on the general voicemail.

Agent Bogris testified that he could be reached over the weekend on his state cell phone and that Phillips could have reported to the office. Bogris further testified that Phillips previously had called him numerous times on his cell phone. Bogris testified Phillips had prior violations for failing to charge his GPS device.

## **PROCEDURE**

On October 2, 2015, the Division of Adult Parole Operations filed a petition for the revocation of Phillips's parole, alleging that Phillips had violated the terms and conditions of parole by failing to charge his GPS device. On the same day, the Los Angeles County Superior Court found probable cause existed to support a revocation and preliminarily revoked Phillips's parole.

At the probable cause determination hearing on October 23, 2015, the court found probable cause that Phillips had violated the terms and conditions of his parole by disabling his GPS device. A contested parole revocation hearing was then held on November 5, 2015, and the court found by a preponderance of the evidence that Phillips had violated his conditions of parole by disabling his GPS tracking device. The court concluded that Phillips knew the GPS charging requirements and that no evidence supported his claim that he went to the police station or tried to reach Agent Bogris during working hours when he discovered his possessions had been stolen. Assuming he charged his device on Sunday, September 27, that fact was not dispositive because he was obligated to charge his device for one hour on Friday, September 25, the morning before he left for work as required. Additionally, the court noted that Phillips's story about the theft of his possessions was not credible because it was similar to a story he previously told.

## **DISCUSSION**

On appeal, Phillips argues that the trial court abused its discretion when it revoked his parole because the evidence was insufficient to support a finding that the violation was wilful.

A revocation of parole is a discretionary decision only justified when the violation of parole is found to be wilful. (*People v. Galvan* (2007) 155 Cal.App.4th 978, 982.) We conclude the evidence was sufficient to support the revocation of Phillips's parole.

In assessing the sufficiency of the evidence we review the record to determine whether "there is substantial evidence of solid value, contradicted or uncontradicted, which will support the trial court's decision." (*People v. Kurey* (2001) 88 Cal.App.4th 840, 848.) In doing so, great deference is given to the trial court, as we resolve conflicting evidence in favor of the decision. (*Id.* at pp. 848-849.)

The trial court cited several reasons for revoking Phillips's parole. First, Phillips had already violated his parole before his possessions were stolen. Second, Phillips did not take appropriate action when he first discovered his possessions were stolen. Third, the similarities between this event and prior occasions undermined Phillips's credibility. Each reason amply supported the trial court's order.

Phillips violated the condition of parole requiring him to charge his device for one hour every 12 hours. Standing alone, that was sufficient evidence for the trial court's conclusion that Phillips wilfully violated parole by not appropriately charging his device on the morning of September 25, 2015.

In addition to the undisputed violation before his charger was stolen, there was no indication that Phillips tried to contact his parole agent or visit the parole office during working hours when he found out that his device was stolen on Friday, September 25. Although Phillips subsequently tried to

charge his device, he had already violated a condition of his parole.

Finally, the court found Phillips's explanation lacked credibility based on his prior parole violations, including a violation for not charging his GPS device. Phillips's emphasis of his own testimony therefore is not persuasive. It is not the function of this court to reweigh the evidence. (*People v. Kurey, supra*, 88 Cal.App.4th at pp. 848-849.)

The authority Phillips cites does not compel a contrary conclusion. In *People v. Galvan, supra*, 155 Cal.App.4th 978, the court found that the defendant's failure to report to the probation office within 24 hours of his release from custody was not wilful because his immediate deportation made it impossible for him to do so. (*Id.* at p. 983.) In the present case, there was no physical impossibility to prevent Phillips from charging the device on the Friday morning. In *People v. Zaring* (1992) 8 Cal.App.4th 362, the court found that the defendant's arrival to court 22 minutes late due to child care issues was not a wilful violation because it was a last minute unforeseen circumstance. *Zaring* held that the violation was not "the result of irresponsibility, contumacious behaviour or disrespect for the orders and expectations of the court." (*Id.* at p. 379.) However, unlike *Zaring*, there was no last minute situation preventing Phillips from charging the device for an hour on Friday morning. Although there may have been an unforeseen circumstance, the circumstance arose only after defendant had violated his parole.

In short, the trial court's decision was supported by sufficient evidence. Phillips's failure to charge the device on the Friday morning and promptly deal with the theft of his

charger on the Friday afternoon, coupled with the determination of his lack of credibility, provides a sufficient basis for the trial court's conclusion that Phillips wilfully violated his parole. Because substantial evidence supported the trial court's finding that Phillips wilfully violated his parole, the trial court did not abuse its discretion in revoking Phillips' parole.

**DISPOSITION**

The order is affirmed.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.